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July 16, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 92-77

Dear Mr. Caton:

Enclosed for filing are the original and nine (9) copies of the Comments of Hotel Communications, Inc. ("HCI"), in CC Docket No. 92-77 regarding the Commission's Second Further Notice of Proposed Rulemaking, released June 6, 1996.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for this purpose.

Quetions regarding this filing may be directed to me at (407) 740-8575.

Steven D. Wyrick
Consultant to
Hotel Communications, Inc.

No. of Copies rec'd 0+9
List ABCDE

cc: Tod Collett, HCI
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Enforcement Division, Common Carrier Bureau
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file: HCI-FCC

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for InterLATA 0+ Calls	)	CC Docket 92-77

COMMENTS OF

Hotel Communications, Inc.

ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

SUMMARY

Hotel Communications, Inc. ("HCI"), is a privately held Texas-based operator service provider serving hospitality properties throughout the nation. The Company respectfully submits the following comments on the Commission's Second Further Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding, released June 6, 1996.

The Commission should clearly define customer expectations and recognize that consumers do not expect to pay the same charges when calling from home, payphones and hotel rooms. Hotel properties are in the best position, based on their own guest profiles, to determine what value added features the guests desire and what costs they are willing to pay for through property imposed fees. Property imposed fees on behalf of hotels are significantly different than those of pay telephones and serve to recover the investment made by hotel owners for the benefit of their guests.

The Commission's proposed benchmark policy is effectively based on AT&T, as opposed to the representation of three market-driven competitors. The Commission should base its benchmark on a non-carrier specific basis, and if not to reclassify AT&T as dominant in the interstate operator services market.

The Commission is obligated to put in place sufficient safeguards to protect consumers and service providers from potential abuse of the proposed benchmark system. These safeguards include: designation of at least one dominant carrier, or the establishment of non-carrier specific rate caps; a clear determination that rates below a rate cap are just and reasonable; a determination that just and reasonable interstate rates are also just and reasonable intrastate rates; and sufficient notice requirements for changes in the rate cap.

INTRODUCTION

In this Notice, the Commission tentatively concludes that it should adopt a disclosure requirement by OSPs who's rates from payphones are above the proposed benchmark average of the three largest OSPs. The disclosure would include "the actual price they will charge for the call dialed -- both the charge for the initial period (including surcharges) as well as the subsequent period charges." It further states that "We expect those OSPs that would be subject to the price disclosure requirements discussed above to begin to take the actions necessary to be able to implement them in a timely manner."

Since this Notice, HCI has ascertained that its actual cost for the proposed disclosure, if its rates were over the benchmark, would be between $1.40 and $1.75 per call. This would include the necessary real time cost to decide (or route to a decision location) whether each call is interstate, and if so to determine the mileage and time of day; calculate the rate that HCI would charge for a seven minute call, as well as the rate that is allowed under the benchmark; compare the two; and orally relay the initial period and subsequent periods to the caller if necessary. This does not include the additional time to answer such questions as "how much will that be for three minutes?"

The added delay from processing and disclosing the information will cause many otherwise-satisfied callers to hang up and go elsewhere even before the rate is delivered. The actual mechanics and time of the disclosure process is roughly equivalent to the mechanics which generate the various AT&T billing surcharges for calling card, operator station and person to person calls. Many properties would require routing to a contracted operator service center due to equipment limitations, or material upgrades to the equipment at customer premises.

HCI's main concern in this proceeding is that the Commission has: (1) improperly evaluated "customer expectations" in the operator services market, and (2) tentatively decided on an inappropriate benchmark rate basis. HCI addresses these two concerns and proposes additional safeguards for the Commission's tentative proposal.

Customer Expectations

HCI believes the Commission has mis-judged the expectations of consumers when they place various types of calls. In the Notice the Commission states that, "We note that while consumers are generally informed about the prices that they will be charged for the individual 1+ calls that they make from their homes, consumers may be unaware that 0+ calls from outside the home may be more expensive than the 1+ calls that consumers make from their homes."

This is an absurd notation and hopefully a misprint. According to this assumption, AT&T's own customers, which supposedly know the prices of 1+ calls, "expect" to pay 33% more in per minute charges alone when using AT&T from outside the home, excluding the proprietary calling card charge of $0.80.

The Commission should not base aggregator operator service benchmarks on presubscribed residential operator services. There are numerous services, such as cellular and a twenty-five cent local payphone call, that the consumer does not equate to the cost of residential service, and operator services from aggregator locations is no exception.

<u>Consumers Know Their Options</u>

Consumers are well-exposed to less costly options, most of which are less convenient. There's hardly a person of dialing-age that has not watched, heard or

seen an advertisement for "1-800-Call-ATT" or "1-800-Collect" on television, radio or signage; or been exposed to prepaid calling cards at every Seven-Eleven and grocery store. Obviously not all consumers use these alternatives, but that decision cannot be interpreted as based on a lack of awareness. It is more likely that dialing the extra ten digits, while searching a keypad for each cryptic letter (akin to playing a child's game) is not worth the difference between the "expected" unknown price and some other unknown price.

As evidenced by the numerous follow-the-leader operator service rate increases of recent years (AT&T always leads, MCI and Sprint always follow), there is no reason to believe that consumers have *any* realistic expectation of payphone charges from any carrier, particularly those the Commission proposes to be benchmarks. Consumers know their options, but even when they make an informed dial around carrier choice, the probability that they know "today's" benchmark initial and additional period price is very slim.

While at first glance the recent benchmark increases might appear to be a boon for operator service providers, the result of the proposed rulemaking will have just the opposite effect. The Commission apparently cared little when AT&T's rates increased, and competitors wonder if the Commission will care at all if and when AT&T decides to let the rates fall to levels which drive all but the benchmark carriers from the market.

Complaints

The Commission states that "a large number of consumers have filed complaints with the Commission about excessive OSP rates, often under circumstances in which the consumers had no knowledge, prior to receiving a bill, that they had used the particular OSP's services." (Underline added) The lack of knowledge of the OSP's identity when the bill is received does not mean that the consumer lacked such knowledge when the call was placed. No one is likely to remember a

branded carrier, or the name of any vendor in a one-time transaction thirty to sixty days after hearing the name, unless, of course, it is a benchmark household name.

The Notice fails to mention how many of the referenced operator service complaints were attributable to the unexpected rate hikes of AT&T, and the price-cloning MCI and Sprint. These complaints will not go away as a result of this proceeding. Although many of the other OSPs' contracted rates are based on static previous rates and would not have increased in proportion, many others are based on current rates and would have raised as well in recent years. When AT&T goes up, most everything goes up, including complaints.

One interesting statistic to know would be how many operator service complaints against the proposed benchmark carriers were from their own presubscribed customers, compared to the presubscribed customers of the other two benchmarks. They each charge their own dial around customers between twenty-five percent and fifty-percent less than they charge the others' customers. Consumer expectation, if such a thing exists, is a very wide gap already.

True Consumer Expectation

This Notice, on several occasions, claims that it "is concerned with narrower issues related to the provision of operator services from payphones." However, in other places, the Notice appears to concern itself with a wider classifications of "public phones" including hotel phones. Consumer expectations from a pay telephone are significantly different than those from a hotel room.

Consumers do not expect to pay the same price from a payphone as they do from their homes, nor do they expect to pay the same price from a hotel room as they do from either of those. It could be argued that consumers expect to pay the "same" for calls from one payphone as from another payphone, but definitely not the same as from the home or a hotel room.

As was the case in 1988, when Judge Greene gave premises owners the choice of OSP serving LEC payphones, the premises owner today, particularly a hotel, is still in the best position to judge consumer expectations. If the APCC wants to set generic prices from their payphones, they certainly have that option today as selector of the presubscribed OSP.

However, just as the rates for hotel rooms, food services and complimentary amenities varies greatly from hotel to hotel, so does the consumer expectation of calling from such an environment. (An in-room movie rental from Spectravision costs nearly three times the same movie on Pay-Per-View with a major in-home cable company.) As an option, there is usually an APCC telephone in the lobby where a guest can stand and receive a lower rate. Of course the payphone equipment does not normally allow for in-room modem connections, voice and fax message indicators, and other such costly enhancements that hotels must assess to phone users to direct costs to the cost-causers.

There is a big difference between an OSP who charges high rates from a generic payphone and an OSP who charges reasonable rates, plus a property imposed fee (PIF) to pay for the phone system, from a hotel room. A PIF from a generic payphone goes to the profit of the location owner for allowing the payphone to occupy space. A hotel PIF provides cost recovery for a value added. The hotel is in the best position to determine what values to add and the level of price that the particular hotel's guests "expect" to bear.

The Proposed Benchmark is Inappropriate

The Commission tentatively concludes that operator service rates should be set on an average of the three largest OSPs in the industry, AT&T, MCI and Sprint. This conclusion is based on an erroneous determination of consumer expectation and swayed totally toward one particular carrier with significant market power.

However, even if consumers expected to pay the same for every call from every location, that rate should not be arbitrarily tied to that one particularly carrier, especially under the guise of fairness by adding two placebo controls.

The "Real" Proposed Benchmark is AT&T

The Commission points out that an "analysis of interstate tariffs filed by AT&T, MCI and Sprint showed that most of their tariffed interstate operator service rates were the same in the fall of 1995." The Commission fails to mention why MCI and Sprint follow the leader when the leader's costs on 68% of its calls are significantly less than their own. The proposed benchmark is not cost-based and amounts to placing explicit operator service price control in the hands of AT&T, a non-dominant carrier.

Witness AT&T's dramatic, and un-scrutinized rate increases over the past two years. The day, evening and night rates, respectively, have risen by 46%, 60% and 58% for a seven-minute, interstate operator station call between 431 and 1,910 miles. The rates of MCI and Sprint followed immediately. Of course these increases have only affected the carriers' non-presubscribed customers (aggregator customers); their own customers almost always receive discounts based on some calling plan or nationwide television promotion.

The NAAG petition which initiated the benchmark proposal seeks to set rates at or below "the dominant carrier." Although the Commission subsequently deemed AT&T non-dominant in the "overall interstate, interexchange telecommunications market," AT&T's dominance in the submarket of operator service is without doubt. As a non-dominant carrier, AT&T's prices are no longer supported by cost data, and such data is essential for setting fair and equitable rate caps. Absent a dominant carrier, the Commission should base its benchmark on surrogate pricing unrelated to a particular carrier or carriers. The Illinois Commerce Commission has

taken such an approach for intrastate calls and the Indiana Utility Regulatory Commission has done the same with intraLATA.

CompTel Proposal

The CompTel proposal is more in line with market realities than the Commission's AT&T-based proposal. However, the mathematics of the CompTel proposal in its current form are unworkable for many OSPs. With modification, a benchmark proposal like CompTel's would also serve to control AT&T and its matching carriers, who's rates for operator services have shown continued increase.

The main problem with CompTel's proposal is its total disregard for the current scheme of calculating call charges. Traditionally, and consistent with customer expectations, there is a per call surcharge, plus the associated initial and subsequent period usage charges. Under the CompTel proposal, the second, third and fourth subsequent periods appear to be capped at $0.50, while the fifth is $0.25, the sixth $0.45, the seventh $0.35, the eighth $0.45 and the ninth $0.35. This is an impossible structure to follow and the basis is without reason.

A more acceptable proposal would be to establish the cap based on consistent initial and subsequent periods. As a point of reference, AT&T's initial minute charge plus the proposed 15% overage is approximately $3.17 for a third party call. This does not include any PIFs by the hotel property owner to recover equipment costs. The initial minute, including PIFs, should be at least at $4.17. As a further point of reference, AT&T's highest subsequent per minute charge, likewise raised by 15%, is $0.46 per minute. This would yield a comparable benchmark price for a nine-minute call of $7.85.

Regardless of the specific rate level the Commission chooses to implement, it is most critical that the benchmark is not tied to a carrier who's cost structure and market dynamics are not universal in the industry.

Safeguards

Dominant Carrier Requirement

Unless the Commission sets a rate structure on a non-carrier-specific basis, it should first classify AT&T or the benchmark group as dominant. If there is no reason to believe that MCI or Sprint would take price initiatives, they should not be made part of the benchmark and AT&T alone should be dominant. Monitoring AT&T alone will yield the exact same result as the proposed three-carrier benchmark, i.e., less costly for everyone.

If the Commission insists that it must base rates on AT&T, it must assume more than a mere minimum (non-dominant) amount of oversight on that carrier's rates and charges. Commission-imposed, rather than market driven, rate caps cannot be appropriately based on one particular non-dominant carrier.

When the Commission reclassified AT&T as non-dominant, it did so under the umbrella of a relevant market described as "all interstate, domestic, interexchange services... with no relevant submarkets." Nothing prohibits the Commission from classifying a carrier dominant in a particular service, and it has even taken dominance to the level of specific international routes on several occasions. The Commission must provide sufficient dominant carrier oversight and should not contemplate setting rates based on a single non-dominant carrier. However, should the Commission choose to set rates based on economic factors not associated with a particular carrier or carriers, then no specific carrier need be deemed dominant solely because of this proceeding.

The Commission stated when it reclassified AT&T as non-dominant in the overall interstate market that it had the authority to do so, with AT&T's support, through a declaratory ruling rather than a specific rulemaking procedure. Similarly, the Commission can reclassify AT&T as dominant in this proceeding without further notice or additional proceedings. Furthermore, the Commission then recognized that "reclassification of AT&T as a non-dominant carrier would not.... limit the remedies available to the Commission in that [Billed Party Preference] proceeding. [footnote] The Commission should exercise its preserved authority and classify AT&T dominant in operator services if it sets benchmarks based on AT&T rates.

The Commission admitted in the re-classification proceeding that "while we acknowledge that AT&T may still be able to control the price of a few discrete services, we do not find that this justifies a finding that AT&T possesses market power in the overall relevant market" of interstate, domestic interexchange telecommunications services. The Commission can and should classify AT&T dominant in the operator services market without affecting the non-rate setting services in the overall relevant market.

Rates and Charges Below the Benchmark Should Be Deemed Just and Reasonable

The Commission has authority under Section 205 to "prescribe just and reasonable charges," including maximums and/or minimums. However, it must be of the opinion that a carrier or carriers are or will be in violation of the Act. Presumably, the Commission is setting rates for all carriers which do not violate the Act and, therefore, are just and reasonable.

Customer inquiries and complaints to the Commission which exclusively concern rates at or below the benchmark should be dismissed without direct response from the OSP. If the Commission chooses to set rates, it should automatically determine

those rates to be just and reasonable and indicate to consumers that they are obligated to pay the charges in full, absent any other complaint.

Just and Reasonable Interstate Rates Should be Deemed Just and Reasonable Intrastate Rates

The Commission concludes that consumers know the amount they pay for 1+ calls from their homes. Many benchmark carrier's have designed services that charge the same amount to "anywhere in the United States," (i.e., widely-advertised Sprint Sense at $0.10 per minute anywhere in the U.S. between 7:00 p.m. and 7:00 a.m. and to Canada on the weekends). There is little, if any, cost differential for non-benchmark OSPs for intrastate operator assisted calls, and definitely nothing to warrant a lower price. If the price of an interstate operator assisted call is deemed just and reasonable by the Commission, the same price is "expected" and should be just and reasonable to any and all locations of similar distance and time.

Many states have capped intrastate rates at AT&T, while some have capped rates at a derivative, i.e. Michigan at 300% of AT&T and Nevada at 150% of AT&T. AT&T's Florida intrastate rates serve as the cap for all OSPs in Florida. In the lowest mileage band, the same intrastate call costs 43% less than the comparable interstate call, and in the highest mileage band the discrepancy is 31% in favor of intrastate. The fact that AT&T's cost structure appears to allow for significantly reduced pricing of intrastate calls does not mean the same is shared by other OSPs. AT&T should explain to the Commission and the industry why interstate operator service rates have increased while similar intrastate rates have fallen. This is particularly important when AT&T arbitrarily reverses the trend to the detriment of all other OSPs.

The Commission should also take measures to prevent states from implementing similar oral pricing disclosures, especially where intrastate rate caps already exist. It will be burdensome enough to monitor AT&T in the interstate jurisdiction and to change rates to follow their whims, let alone monitoring and revising all intrastate rates on similar grounds.

Rate Changes Require Sufficient Notice and Control

Any changes in the benchmark rate should provide OSPs with sufficient time to modify their business plans accordingly. A reasonable length of time to renegotiate location contracts would be a minimum of six months. Six months would also provide any remaining OSP investors with some minimized risk of investment.

If the benchmark is tied to a dominant carrier, the dominant carrier's operator service rates should likewise be tied to changes in dial station rates. Operator service rates should not be allowed to rise or fall faster than the residential rates consumers "expect" to pay from home for 1+ calls. Furthermore, AT&T should be required to provide estimated price projections or actual price commitments, as it did in the non-dominant proceeding with low income and low volume users.

Waiver of Filing Fees for Mandatory Rate Changes

Given that non-benchmark OSPs have no control over when and how often AT&T decides to change their rates, all filing fees for non-benchmark OSPs should be waived for mandatory filings.

Conclusion

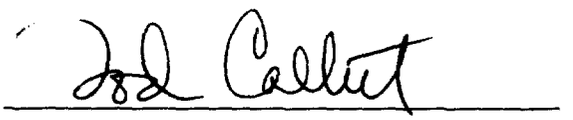
The Commission's assumption that consumers "expect" to pay the same for 0+ calls from aggregator locations as they pay for 1+ calls from home is unfounded and the contrary is supported by the benchmarks' own rates and charges. The Commission must recognize the hotel's need to recover its investment in the equipment and services it provides its calling guests.

MCI and Sprint have shown without fail that they will effectively match AT&T's operator service rates penny-for-penny. Any mathematical attempt to use a benchmark over a factual dominance is nothing more than a sham to establish rules with disregard to economics and market realities. The record supports that AT&T is dominant in operator services and the Commission can classify it dominant in this proceeding. The fact that AT&T controls over 90% of operator service prices with only 60% of the market share is proof enough. Any rate setting based on a particular carrier or that carrier's controlled market pricing must be based on a dominant carrier.

The Commission has the authority to set prices and has the obligation to instill sufficient safeguards to prevent additional customer confusion if it indeed established price disclosures.

Hotel Communications Inc. respectfully submits these comments on Billed Party Preference, Second Further Notice of Proposed Rulemaking.

July 16, 1996



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